

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION

**KELLI DENISE GOODE, Individually,
and also as the Personal Representative
of Troy Charlton Goode, Deceased, and
as Mother, Natural Guardian, and Next
Friend of R.G., a Minor, and also on behalf
of all similarly situated persons**

Plaintiff,

**NO. 3:17-CV-060-DMB-RP
JURY DEMANDED**

THE CITY OF SOUTHAVEN, et al

Defendants.

**DEFENDANT LEMUEL D. OLIVER, M.D.'S DAUBERT MOTION TO EXCLUDE
PLAINTIFF'S PROPOSED EXPERT TESTIMONY**

Defendant Lemuel D. Oliver, M.D., ("Dr. Oliver") by and through counsel, and files this, his Daubert Motion to exclude Plaintiff's proposed expert testimony on the following grounds:

Plaintiff's contends the decedent Troy Goode was restrained in the prone maximal restraint "PMR" (or "hogtie" as Plaintiff alleges) position which caused positional asphyxia and Goode's death. Notwithstanding the Mississippi State Medical Examiner autopsy report did not attribute Goode's death to PMR, and she testified she did not believe Goode's position caused or contributed to cause his death, Plaintiff relies on this theory and disclosed three experts on cause of death.

Dr. Oliver files this Daubert Motion challenging both the qualifications of all of Plaintiff's experts to offer the opinions given (both on standard of care and cause of death)

as well as the reliability of those opinions as the opinions are not supported by science. Additionally, Plaintiff's three cause of death experts, Dr. Michael Arnall, Dr. Parin Parikh and Dr. Cyril Wecht fail to meet the required Daubert factors and their scientifically invalid opinions should be excluded.

There are multiple scientific, peer reviewed studies that have found the PMR does not cause positional asphyxia or otherwise lead to cardiorespiratory compromise and death. This is contrary to Plaintiff's theory on cause of death and her experts' testimony. In fact, Plaintiff's experts have no reliable scientific studies to support their theory.

In further support of this motion, Dr. Oliver submits the following:

Exhibit 1. *"Reexamination of Custody Restraint Position in Positional Asphyxia, Chan, Theodore, C., M.D., Vilke, Gary M., M.D., Neuman, Tom, M.D.; The American Journal of Forensic Medicine and Pathology, Volume 19 (3), September 1996 pp. 201-206.*

Exhibit 2. *"Ventilatory and Metabolic Demands During Aggressive Physical Restraint in Healthy Adults", Michalewicz, Betty A., M.S., Chan Theodore C., M.D., Vilke, Gary M., M.D., Levy, Susan S., Ph.D., Neuman, Tom S., M.D. and Kolkhorst, Fred W., Ph.D.; Journal of Forensic Scientists, Vol. 52, No. 1, January 2007, pp. 171 – 175.*

Exhibit 3. *The Effect of the Prone Maximal Restraint Position With and Without Weight Force on Cardiac Output and Other Hemodynamic Measures", Savaser, Davut J., M.D., Campbell, Colleen, M.D., Castillo, Edward M., Ph.D., Vilke, Gary M., M.D., Sloane, Christian, M.D., Neuman, Tom, M.D., Hansen, Allan V., M.D., Sha Virag, M.D., Chan, Theodore C., M.D.; Journal of Forensic and Legal Medicine, Vol. 20, pp. 991-995 (2013).*

Exhibit 4. *Handbook of Forensic Pathology, DiMaio, Vincent J.M. and Dana, Suzanna E.; Second Edition, pp. 168 - 169.*

Exhibit 5 - *"Sudden Death in Custody", Chan and Ross (Neuman, Tom, Chapter 4)*

Exhibit 6 – Deposition of Robert Krause

Exhibit 7 – Deposition of Darrell Coslin

Exhibit 8 – Deposition of David Nichols, Ph.D.

Exhibit 9 – Deposition of Cyril Wecht, M.D.

Exhibit 10 – Deposition of Michael Arnall, M.D.

Exhibit 11 – Deposition of Parin Parikh, M.D.

Exhibit 12 – Deposition of Erin Barnhart, M.D.

RESPECTFULLY SUBMITTED, this the 23rd day of January, 2018.

RAINEY, KIZER, REVIERE & BELL, PLC

/s/ Marty R. Phillips

AMANDA C. WADDELL, MSB# 99544
MARTY R. PHILLIPS, *by pro hac vice*
50 North Front Street, Ste. 610
Memphis, TN 38103
mphillips@raineykizer.com
awaddell@raineykizer.com

J. RIC GASS, *by pro hac vice*
Gass Weber Mullins, LLC
241 North Broadway, Suite 300
Milwaukee, WI 53202
gass@gwmlaw.com

*Attorneys for Defendant,
Lemuel Donja Oliver, M.D.*

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of January, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing report. Parties may access this filing through the Court's electronic filing system.

Tim Edwards, Esq., BPR #5353
Kevin M. McCormack, Esq., BPR #29295
Ballin, Ballin & Fishman, P.C.
200 Jefferson Avenue, Suite 1250
Memphis, TN 38103

Hiram C. Eastland, III, Esq., MSB #101560
James F. Garrett, Esq. MSB #4759
Eastland and Garrett, PLLC
103 N. Lamar Blvd., Suite 204
Oxford, MS 38655

Attorneys for Plaintiff

David W. Upchurch, Esq., MSB #10558
John M. McIntosh, Esq., BPR #030260
Upchurch & Upchurch, P.A.
P.O. Drawer 2529
Tupelo, MS 38803-2529

*Attorneys for Defendant Baptist
Memorial Hospital-Desoto, Inc.*

Berkley N. Huskison, Esq., MSB #9582
L. Bradley Dillard, Esq., BPR #017333
Mitchell, McNutt & Sams, P.A.
P.O. Box 7120
Tupelo, MS 38802-7120

*Attorneys for Defendants City of Southaven,
Todd Baggett, Jeremy Bond, Tyler Price,
Joel Rich, Jason Scallorn, Stacie Graham,
Mike Mueller, William Painter, Jr., Bruce
Sebring, and Richard Weatherford*

Matthew R. Macaw, Esq., MSB #103601
Joseph B. Baker, Esq., BPR #28046
Loys A. "Trey" Jordan, III, Esq. BPR #16766
Stephen P. Miller, Esq., BPR #15574
McDonald Kuhn
5400 Poplar Avenue, Suite 330
Memphis, TN 38119

*Attorneys for Defendant
Southeastern Emergency Physicians, Inc.*

/s/ Marty R. Phillips